

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: March 4, 2010

Council Meeting Date: June 15, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager
FROM: Andrew Granger, P.E., City Engineer
THROUGH: Jamal Rahimi, PE, City Traffic Engineer
SUBJECT: Intergovernmental Agreement, Peoria Unified School District, Centennial High School, 79th Avenue

RECOMMENDATION:

Discussion and possible action to authorize the execution of an Intergovernmental Agreement (IGA), with the Peoria Unified School District (PUSD), and authorize the Mayor to execute the IGA between PUSD and the City of Peoria (City) to jointly participate in the acquisition and installation of two Radar Feedback Signs, the total of which is not to exceed \$12,000, and to be maintained by PUSD.

SUMMARY:

The City of Peoria and PUSD are partnering in several projects to improve safety at Centennial High School. The FY11 Community Works Program has already provided the installation of a raised pedestrian refuge island and staggered crosswalk to improve safety at the main crosswalk. The Community Works Program will be installing additional street lighting along 79th Avenue to improve visibility during hours of darkness. The City and PUSD are partnering to install a set of permanently mounted Radar Feedback Signs on 79th Avenue to help control speeding in the vicinity of the school. The City will support this project by funding half of the initial cost of the materials and installation, up to \$6,000. These signs will be installed in the right-of-way, and will be operated and maintained by PUSD, so it will not create an ongoing burden to City staff.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ **RES. #** _____
LCON# _____ **LIC. #** _____
Action Date: _____

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FISCAL NOTE:

Funding for this project is available in the FY2010 Capital Improvement Program, Community Works Project. Payment will be from the General Fund Street System Account 1000-0310-543001-CIPOF-COP0001.

ATTACHMENT:

IGA

CONTACT: Brandon Forrey, 773-7201

**INTERGOVERNMENTAL AGREEMENT
FOR
CENTENNIAL HIGH SCHOOL RADAR FEEDBACK SIGNS**

I. PARTIES

This Intergovernmental Agreement for Centennial High School Radar Feedback Signs (the "Agreement") is entered into this _____ day of _____ 2010, pursuant to A.R.S. §§ 11-951, *et seq.* between the following entities for the joint exercise of powers common to the parties:

CITY OF PEORIA,
an Arizona municipal corporation
organized under the constitution and statutes of the State of Arizona
(hereinafter "the City"),

and

PEORIA UNIFIED SCHOOL DISTRICT NO. 11 OF MARICOPA COUNTY,
a political subdivision of the State of Arizona
(hereinafter, "the School District").

II. STATUTORY AUTHORITY

The Parties to this Agreement are empowered to carry on activities included in this Agreement pursuant to:

A.R.S. § 11-951
A.R.S. § 11-952
A.R.S. § 15-342(13)
A.R.S. § 15-364

and

PEORIA CITY CHARTER, ARTICLE 1, Sec. 3

III. RECITALS

- A. **WHEREAS**, Cities and school districts may enter into intergovernmental agreements for the exercise of joint or common powers;
- B. **WHEREAS**, the City and the School District share an interest in controlling vehicle speeding near Centennial High School;

- C. **WHEREAS**, the City and the School District have agreed to split the cost of acquiring and installing two Radar Feedback Signs, the total of which is not to exceed \$12,000, which will be installed, operated and maintained by the School District and placed in City right-of-way on 79th Avenue near Centennial High School; and
- D. **WHEREAS**, the City and the School District have concluded that it is in their mutual best interest to enter into this agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the City and the School District agree as follows:

IV. COVENANTS

A. City's Obligations:

- 1. City shall fund half of any equipment and labor cost for the installation of two Radar Feedback Signs on 79th Avenue at locations approved by the City.
- 2. City shall issue the School District a permit to install two Radar Feedback Signs in City right-of-way.
- 3. City shall allow the School District to maintain, service and operate Radar Feedback Signs in City right-of-way.
- 4. City shall provide to the School District a written operating agreement for the allowable times and use of the Radar Feedback Signs.

B. School District Obligations

- 1. The School District shall fund half of any equipment and labor cost for the installation of two Radar Feedback Signs on 79th Avenue at locations approved by the City.
- 2. The School District shall select hardware and a contractor approved by the City.
- 3. The School District shall maintain, service and operate the Radar Feedback Signs.

V. NOTICES

Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, UPS or DHL) or by mutually acknowledged facsimile transmission addressed as follows:

To School District:

Superintendent
Peoria Unified School District, No. 11
6330 West Thunderbird Road
Peoria, Arizona 85306

with a copy to:

Calderon Law Offices
2020 North Central Avenue
Suite 1110
Phoenix, Arizona 85004

To City:

City Manager
City of Peoria
8401 W. Monroe Street, Room 300
Peoria, Arizona 85345

with a copy to:

City Attorney
City of Peoria
8401 W. Monroe Street, Room 280
Peoria, Arizona 85345

or at any other address designated by the School District or City in writing.

VI. TERM

The initial term of this Agreement shall commence on _____, 2010. Thereafter, the parties may, by mutual written agreement, extend the term of this Agreement, in the form of a five-year renewal option upon approval of the City and School District, with such approval not being unreasonably withheld. Pursuant to A.R.S. § 11-952, the term extension will be effective upon the approval and execution of an

addendum to this Agreement by the City and the School District. Each addendum extending the term of this Agreement shall be filed by the School District with the Maricopa County Recorder's Office. The School District shall provide notice of the filing, along with a recorded copy of the Extension Agreement, to the City within 15 days of filing the Extension Agreement with the Maricopa County Recorder's Office.

VII. NONDISCRIMINATION

During the performance of this Agreement, the City and the School District agree to comply with all applicable State and Federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action.

VIII. PURCHASING; ACQUISITION

The City and the School District shall comply with all applicable laws in purchasing property required to be provided by the parties to this Agreement.

IX. NON-APPROPRIATIONS

The City and the School District recognize that performance by either party hereunder may be dependent upon the appropriation of funds to or by that party. Should either party fail to be appropriated or to appropriate the necessary funds, that party may, with a thirty (30) day written notice to the other party, cancel this Agreement without further duty or obligation. Each party agrees to notify the other within fifteen (15) days after the awareness of the unavailability of such funds.

X. CONFLICTS OF INTEREST

This Agreement is cancelable pursuant to the provisions of A.R.S. § 38-511, the provisions of which are incorporated herein. In the event the work under this Agreement is terminated in whole or in part, the party causing the Agreement to be canceled shall reimburse the other party for its costs and expenses specified in such regulation. Both parties will furnish all necessary reports of activities completed or in progress through the date of termination.

XI. INSURANCE

- A. Each party shall secure and maintain during the life of this Agreement statutory worker's compensation and employer's liability insurance, commercial general liability, public liability and property damage and automobile liability insurance, including contractual

liability, with limits of not less than \$1,000,000.00 combined single limit per occurrence and not less than \$2,000,000.00 general aggregate. Each party shall retain the option of discharging this obligation by means of funded self-insurance. Should coverage be provided on a claims-made basis, the reporting period for claims shall be written so that it can be extended for two years. Contractors retained to provide work or service required by the Agreement will maintain Professional Liability Insurance covering acts, errors, mistakes and omissions arising out of the work or service performed by the Contractor or any person employed by the Contractor, within the limits specified above.

- B. The School District shall secure and maintain insurance coverage through Valley Schools Insurance Trust or shall secure and maintain insurance coverage protecting its personal property against all risk of physical damage or loss for their full replacement cost. The City shall obtain similar coverage for the personal property it maintains in the School District's Facilities. The School District and the City hereby mutually waive their respective rights of recovery against each other for any loss insured by property insurance coverage existing for the benefit of the respective parties.
- C. All insurance carriers or carriers contracted by the Valley Schools Insurance Trust shall be approved and shall be in good standing with the Arizona Department of Insurance and possess an A- or better A.M. best rating. Prior to the commencement of this Agreement, the City and the School District shall provide certificates of insurance evidencing coverage provisions. Each party's coverage shall be endorsed to provide at least a thirty (30) day prior written notification of cancellation or material change in coverage.
- D. In the event of any third party claim or legal action against both School District and City, the Parties to this agreement agree to discuss and analyze the benefits of a common but mutual defense against such claim or legal action.

XII. INDEMNIFICATION

To the fullest extent permissible under Arizona law, the Parties shall defend, indemnify and hold harmless the other, its agents, representatives, officers, director, officials, employees and volunteers relating to, arising out of, resulting from or alleged to have resulted from any acts related to this Agreement. The Parties' duty to defend, indemnify and hold harmless the other, its agents, representatives, officers, directors, officials, employees and volunteers shall arise in connection with any claim, damage, loss or expense (including, but not limited to attorney's fees, court costs and the

cost of appellate proceedings) that is attributable to personal or bodily injury, sickness, disease, death, injury to, impairment or destruction of property, including the loss of use resulting therefrom, caused by any act or omission of the Party, their subcontractors, anyone directly or indirectly employed by them or anyone for whose negligent acts they may be liable arising out of the use of the facilities. The amount of insurance coverage requirements set forth above will in no way be construed as limiting the scope of the indemnity to the extent permissible under Arizona law, in these paragraphs.

XIII. TIME OF ESSENCE

Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

XIV. MISCELLANEOUS PROVISIONS

- A. **Assignability.** This Agreement is non-assignable in whole or in part by either party hereto without the written consent of all the Parties.
- B. **Authority of Signatory.** Each individual executing this Agreement warrants that they are duly authorized to execute and deliver this Agreement.
- C. **Choice of Forum.** Any suit or action arising under this Agreement shall be commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, Arizona.
- D. **Entire Agreement.** This written Agreement and attachments hereto constitutes the entire Agreement between the Parties with respect to the subject matter hereto. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the Parties, except as expressly provided otherwise in this Agreement.
- E. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- F. **General Compliance with Laws.** All Parties are required to comply with all applicable Federal and State laws and local ordinances and regulations.
- G. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Arizona.

- H. **Headings.** The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraph or of this Agreement nor in any way affect this Agreement.
- I. **Incorporation of Documents.** All documents referred to in this Agreement are hereby incorporated by reference into the Agreement.
- J. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of the Parties and is not to be construed against any Party.
- K. **Retention of Records.** Pursuant to law, the Parties shall keep and maintain accurate books of records and account in accordance with generally accepted accounting principles of liabilities and obligations incurred under this Agreement and all paper, files, accounts, reports and all other material relating to work under this Agreement and shall make all such materials available at any reasonable time during the term of this Agreement and for five (5) years from the date of termination for audit, inspection and copying upon any Party's request.
- L. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.
- M. **Waiver.** Waiver, or the failure of any Party at any time to require performance by the other of any provision herein, shall in no way affect the Party's subsequent rights and obligations under that provision. Waiver by either Party of a breach of any provision herein shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.
- N. **Arbitration.** In the event of a dispute under this Agreement, the Parties agree to resolve any disputes among themselves arising out of or relating to this Agreement or the alleged breach thereof by binding private arbitration in Phoenix, Arizona before a mutually approved arbitrator or, failing agreement of the Parties, in accordance with the rules the American Arbitration Association. The arbitration shall be conducted in accordance with the American Arbitration Association rules. Each party shall have the right to enforce or confirm the award or determination in its favor by an action commenced in any court having jurisdiction. All costs and attorneys' fees shall be awarded to the prevailing party.

- O. **Personnel.** The personnel of the School District will not for any purpose be considered employees or agents of the City, and the District assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits.

- P. **E-Verify.** To the extent applicable under A.R.S. § 41-4401, the parties warrant compliance, on behalf of themselves and any and all subcontractors, with all Federal immigration laws and regulations that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). The breach of the above-mentioned warranty by one party shall be deemed a material breach of this Agreement and the non-breaching party may terminate this Agreement. Each party retains the legal right to inspect the papers of the other party to ensure that the party is complying with the above-mentioned warranty under this Agreement.

- Q. **Scrutinizing Business Operations.** To the extent applicable under A.R.S. Title 35, Articles 7 through 9, the parties certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in A.R.S. §§ 35-391 or 35-393, as applicable. If a party determines that the other party submitted a false certification, the party may impose remedies as provided by law including terminating this Agreement.

XV. RECORDING

Pursuant to A.R.S. § 11-952(G), a fully executed copy of this Agreement shall be filed with the Maricopa County Recorder.

IN WITNESS WHEREOF, the Parties enter into this Agreement on the date and year first specified above.

CITY OF PEORIA

By: Carl Swenson, City Manager

ATTEST:

Mary Jo Waddell, City Clerk

PEORIA UNIFIED SCHOOL DISTRICT, NO. 11

President

By: Kathy Knecht, Governing Board

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the Office of the City Attorney as legal counsel for the City of Peoria, who has determined that the Agreement is in the proper form and within the powers and authority granted under the laws of the State of Arizona to the City of Peoria.

DATED this _____ day of _____, 2010.

OFFICE OF THE CITY ATTORNEY

Stephen M. Kemp, City Attorney
8401 West Monroe Street
Peoria, Arizona 85345

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the attorney for the Peoria Unified School District and it is determined that the Agreement is in the proper form and within the powers and authority granted under the laws of the State of Arizona to the Peoria Unified School District.

DATED this 5 day of April, 2010.

CALDERON LAW OFFICES, P.L.C.

By Ernest Calderon

Ernest Calderon, Esq.
Calderón Law Offices
2020 N. Central Avenue, Suite 1110
Phoenix, AZ 85004-0001